

Honorable Benjamin Settle

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT TACOMA

LONNIE ENGEL,

Plaintiff,

vs.

Case No.: C09-5140 BHS

FIRST AMERICAN TITLE INSURANCE
COMPANY, a Washington Corporation;
EXECUTIVE TRUSTEE SERVICES, LLC,
a Delaware Corporation licensed to conduct
business in Washington State;
HOMECOMINGS FINANCIAL LLC
(F/K/A Homecomings Financial Network,
Inc.), a Delaware Corporation licensed to
conduct business in Washington State;
GMAC MORTGAGE, LLC, a Delaware
Corporation licensed to conduct business in
Washington State; NATIONSTAR
MORTGAGE, LLC (d/b/a Champion
Mortgage Company), a Delaware
Corporation licensed to conduct business in
Washington State; KBC MORTGAGE, a
Washington Corporation; STEVEN B.
RODGERS, Real Estate Appraiser, and
JANE DOE RODGERS, husband and wife
and their marital community; and
RODGERS & ASSOCIATES, a Real Estate

SECOND AMENDED COMPLAINT FOR
VIOLATION OF THE TRUTH IN LENDING
ACT, VIOLATION OF THE REAL ESTATE
SETTLEMENT PROCEDURES ACT,
WRONGFUL FORECLOSURE, VIOLATIONS
OF THE MORTGAGE BROKER PRACTICES
ACT and VIOLATION OF THE CONSUMER
PROTECTION ACT.

Appraisal Service, licensed to do business in the State of Washington; WASHINGTON INTERNATIONAL INSURANCE COMPANY an authorized insurance company doing business in the State of Washington under bond number 9047629; SAFECO INSURANCE COMPANY OF AMERICA under bond number 5977463 bonding defendant NATIONSTAR.

Defendants.

COMES NOW Plaintiff, Lonnie Engel, for his causes of action against Defendants and states as follows:

I. JURISDICTION

This Court has jurisdiction over the parties herein based upon the pleading of federal law claims, including violations of the Truth in Lending Act, 15 U.S.C. § 1601, *et seq.*, Regulation Z, the Real Estate Settlement Procedures Act, 12 U.S.C. § 2601, *et seq.* Regulation X, the Gramm-Leach-Bliley Act, 15 U.S.C. § 6801, *et seq.*, Regulation P; the Fair Credit Reporting Act, 15 U.S.C. § 1681, *et seq.*; and the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, *et seq.*;

II. PARTIES

Plaintiff, LONNIE ENGEL ("Mr. Engel"), is a resident of Lewis County, Washington, and resides in his home, which is the subject of these causes of action, at 2319 Eureka Ave., Centralia, WA 98531.

1. Defendant FIRST AMERICAN TITLE INSURANCE COMPANY ("FIRST AMERICAN") is a sub-Trustee of the Property covered by the subject loan that closed on or about August 30, 2007. FIRST AMERICAN is a Washington Corporation doing business in this state by holding title as trustee to mortgage loans held by residents

1 of the state of Washington and by obtaining security interests in real property located in
2 Lewis County and throughout the State of Washington. FIRST AMERICAN is the
3 “client” of Defendant Executive Trustee Services, LLC;

4 2. Defendant EXECUTIVE TRUSTEE SERVICES, LLC (“ETS”) claims to
5 be the person designated in the Deed of Trust as the Trustee of the property covered by
6 the subject loan that closed on or about August 30, 2007. ETS is a Delaware Corporation
7 licensed to conduct business in Washington State as a “Collection Agency” and is a “debt
8 collector” as defined under the Fair Debt Collection Practices Act 15 U.S.C. 1692a(6).
9 ETS claims to hold title as trustee to the mortgage loans held by residents of the state of
10 Washington and by obtaining security interests in real property located in Lewis County
11 and throughout the State of Washington.

12 3. Defendant HOMECOMINGS Financial, LLC (F/K/A Homecomings
13 Financial Network, Inc.) (“Homecomings”) was the original lender/loan owner of the
14 subject loan that closed on or about August 30, 2007. HOMECOMINGS is a Delaware
15 corporation doing business in the State of Washington by making mortgage loans to
16 residents of the State of Washington, and by obtaining security interests in real property
17 located in Lewis County and throughout the State of Washington.

18 4. Defendant GMAC MORTGAGE, LLC, (“GMAC”), is the immediate
19 assignee from Defendant HOMECOMINGS and was the servicer/owner of the subject
20 loan, for the majority of the life of the loan, that closed on or about August 30, 2007.
21 GMAC is a Delaware Corporation doing business in the State of Washington by servicing
22 mortgage loans held by residents of the State of Washington and soliciting to make loans
23 to residents of the State of Washington, and by obtaining security interests in real
24 property located in Lewis County and throughout the State of Washington.
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1 6. Defendant KBC MORTGAGE ("KBC") is a mortgage broker licensed to
2 do business in the State of Washington and is engaged in the business of brokering
3 mortgage loans for residents of the State of Washington. Defendant KBC brokered the
4 mortgage loan that is the subject of these causes of action. Defendant KBC's
5 Washington Corporation registration expired on December 31, 2008.

6 7. Defendant STEVEN B. RODGERS and JANE DOE RODGERS, husband
7 and wife and their marital community. Mr. Rodgers is the sole proprietors of RODGERS
8 & ASSOCIATES and is a real estate appraiser, licensed to do business in the State of
9 Washington under UBI 602959392.

10 9. Defendant RODGERS & ASSOCIATES is a real estate appraisal service
11 located in Port Orchard, WA and licensed to do business in the State of Washington
12 under UBI 602959392.

13 10. Defendant KELLY HODSON, SR and JANE DOE HODSON, husband and
14 wife and their marital community, were, at all times relevant to this litigation, owners
15 and/or governing persons of KBC MORTGAGEGROUP, INC. a profit corporation
16 licensed under UBI 602568523 and doing business in the State of Washington.

17 11. Defendant LISA A. HODSON and JOHN DOE HODSON, husband and wife
18 and their marital community, were, at all times relevant to this litigation, owners and/or
19 governing persons of KBC MORTGAGEGROUP, INC. a profit corporation licensed
20 under UBI 602568523 and doing business in the State of Washington.

21 12. Defendant WASHINGTON INTERNATIONAL INSURANCE COMPANY
22 is the bonding company for defendant KBC MORTGAGE and holds a bond on that
23 company for not less than \$60,000 under bond number 9047629.

1 5. Mr. Engel signed the loan documents on or about August 30, 2007, the total
2 costs of the loan, including loan origination fees, processing, application, mortgage
3 broker, administration and underwriting fees were not disclosed, therefore making it
4 impossible to determine the total cost of the loan.

5 6. KBC is in the business of finding clients loans to fund their home
6 purchases. KBC does not disclose to their clients that they received numerous levels of
7 programs for back end yield spread premiums to place clients in high risk loans that only
8 benefit KBC's bottom line. In addition, the "yield spread premium" in return for placing
9 Mr. Engel into that particular loan, which caused the interest rate and hence finance
10 charge on Mr. Engel's loan to be inflated was not disclosed to Mr. Engel until after the
11 loan documents had been signed. Mr. Engel was not provided any information prior to
12 entering into the loan explaining that Mr. Engel would actually be paying these costs
13 through the increase in his interest rate and finance charge.

14 7. Mr. Engel entered into a loan transaction with Defendant Homecomings
15 August 30, 2007, wherein he signed a Promissory Note and agreed to repay Defendant
16 Homecomings and/or its assignees the amount owed under that Note and that debt was
17 secured by a Deed of Trust that was recorded in the records of Lewis County,
18 Washington.

19 8. To aid the process of the loan, KBC sent Plaintiff blank applications and
20 loan documents to sign.

21 9. Mr. Engel is an unsophisticated consumer. This is his first home purchase.

22 10. Mr. Engel received a HUD 1 Settlement Statement on or after September 5,
23 2007, a Good Faith Estimate on or after September 5, 2007, and has still not received a
24 correct Truth In Lending Disclosure from any of the Defendants.
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1 11. Mr. Engel received a letter from GMAC Mortgage dated September 11,
2 2007, indicating that Defendant Homecomings transferred his account to GMAC
3 Mortgage effective October 1, 2007.

4 12. Mr. Engel's loan is a Fannie Mae mortgage.

5 13. Mr. Engel was required to obtain Private Mortgage Insurance to obtain the
6 credit to qualify for his loan.

7 14. Defendant KBC charged Mr. Engel an administrative fee for preparing the
8 loan documents, HUD, and TILA Disclosure.

9 15. Defendant KBC charged Mr. Engel a loan processing fee for submitting the
10 loan application to the bank, running Mr. Engel's credit, and discussing what loan
11 program he may be eligible for.

12 16. Mr. Engel did not receive all required loan documentation in advance of
13 signing the Note and Deed on or about August 30, 2007.

14 17. Mr. Engel has made several attempts with Defendants GMAC and
15 HOMECOMINGS to modify the terms of his loan and enter into a workout arrangement,
16 where GMAC and HOMECOMINGS refused to offer or negotiate any terms with Mr.
17 Engel.

18 18. At all times relevant to this matter, Defendant Executive Trustee Services
19 (ETS) was not and is not a domestic corporation incorporated under Title 23B, 30, 31, 32,
20 or 33 RCW of which at least one officer is a Washington resident.

21 19. ETS is not a title insurance company authorized to insure title to real
22 property under the laws of this state, or its agents.

23 20. ETS is not an attorney who is an active member of the Washington State
24 Bar Association.

1 21. ETS is not a professional corporation incorporated under chapter 18.100
2 RCW, is not a professional limited liability company formed under chapter 25.15 RCW,
3 is not a general partnership formed under chapter 25.04 RCW, and is not a domestic
4 corporation wholly owned by licensed attorneys or entities.

5 22. ETS is not an agency or instrumentality of the United States Government.

6 23. ETS is not a national bank, savings bank, or savings and loan association
7 chartered under the laws of the United States.

8 24. Defendants HOMECOMINGS, GMAC, and ETS are a part of the same
9 “family” of companies, wherefore the acts of one company may be deemed to have been
10 done for the benefit of the other.

11 25. At all times relevant to this matter, Defendant ETS has not maintained a
12 street address in this state where personal service of process may be made, and has not
13 maintained a physical presence with telephone service at such address.

14 **IV. VIOLATION OF THE TRUTH IN LENDING ACT,**
15 **15 U.S.C. §1601, et seq.**

16 1. This litigation involves a residential mortgage transaction as defined under 15
17 U.S.C. § 1601.

18 2. The Truth In Lending Act violations herein are subject to the three (3) year rule as
19 this action is in defense of a foreclosure on the subject property.

20 3. Plaintiff is a person as defined under 15 U.S. C. § 1601.

21 4. KBC MORTGAGE and GMAC are organizations as defined under 15 U.S. C §
22 1601 et. seq.

23 5. KBC MORTGAGE and GMAC failed to provide the required disclosures as
24 required and defined under 15 U.S.C. §1601 et seq.

25 6. KBC MORTGAGE and GMAC was, at all times relevant to this litigation, a
creditor as defined under 15 U.S.C § 1601 et. seq.

1 7. KBC MORTGAGE and GMAC failed to disclose the true amount of the finance
2 charges to Plaintiff, in violation of 15 U.S.C. § 1607 et seq.

3 8. When the loan was transferred to GMAC, GMAC did not provide a Good Faith
4 Estimate and/or Truth in Lending Disclosure Statement to Plaintiff.

5 9. Defendant KBC MORTGAGE and GMAC violated 15 U.S.C. § 1601 et.seq. by
6 having more than the allowed discrepancy when disclosing the annual percentage rate.

7 10. When GMAC Acquired the loan, GMAC also acquired the liability for any
8 wrongdoing on the part of KBC MORTGAGE.

9 11. Defendant HOMECOMINGS FINANCIAL is a subprime division of GMAC and
10 is included in the GMAC family of companies, and, as a parent company, GMAC is responsible
11 for all wrongdoing done by HOMECOMINGS FINANCIAL, its agent.

12 **V. VIOLATION OF REAL ESTATE SETTLEMENT PROCEDURES ACT**
13 **12 U.S.C. 2601, et seq.**

14 1. Plaintiff realleges each and every item and allegation above as if fully and
15 completely set forth herein.

16 2. Defendant KBC MORTGAGE, through its agent had Plaintiff sign a blank loan
17 application which Defendant's agent later completed, which showed a debt to asset ratio of a
18 negative number which would indicate Plaintiff did not qualify for the loan.

19 3. KBC received a yield spread premium from Defendant HOMECOMINGS
20 FINANCIAL and did not disclose this to Plaintiff until after all the loan documents had been
21 signed on August 30, 2007.

22 4. KBC charged fees to the Plaintiff for the preparation of loan documents, HUD,
23 and TILA disclosure statements as an administrative fee the loan documents, HUD, and
24 TILA Disclosure in violation of law under RESPA, 12 U.S.C. § 2601, et seq.
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5. KBC did not disclose to Plaintiff it had a business affiliation with Defendant HOMECOMINGS FINANCIAL from whom they received an undisclosed yield spread premium for placing Plaintiff in the loan he received.

6. Therefore, Plaintiff maintains that Defendant KBC and Defendant HOMECOMINGS FINANCIAL and by way of assignment, Defendant GMAC are liable for violations of the Real Estate Settlement Procedures Act, 12 U.S.C. 2601, *et. seq.*, and Regulation X.

**VI. VIOLATIONS OF THE MORTGAGE BROKERS PRACTICES ACT
RCW 19.146 et seq.**

1. Plaintiff realleges each and every allegation above as if fully and completely set forth herein.

2. KBC sought to directly and indirectly employ a scheme, device or artifice to defraud and mislead its borrowers and other persons.

3. KBC engaged in unfair and deceptive practice toward Plaintiff.

4. KBC and its agents entered into a contract with Plaintiff that provided in substance the broker would provide best efforts to obtain a loan for Plaintiff.

5. KBC made, through its actions, false representations with regard to the rates or other financing terms or conditions for the residential mortgage loan into which they placed Plaintiff.

6. KBC failed to disclose the true rate of interest which Plaintiff would ultimately be paying for his loan.

7. KBC, its assignees, employees and agents failed to comply with requirements of the Truth In Lending Act and other such acts as set out in the statute.

8. KBC, its assignees, employees and agents charged fees prohibited by Statute.

9. As a result of these violations, Plaintiff seeks damages and attorney fees and costs.

**VII. VIOLATIONS OF WASHINGTON STATE CONSUMER PROTECTION ACT
RCW 19.86 et seq.**

1. Plaintiff realleges each and every allegation above as if fully and completely set forth herein.

2. Plaintiff is a person as described in RCW 19.86 et.seq.

3. Defendants are corporations or individuals who are subject to the laws of the State of Washington.

4. The acts alleged herein took place in the State of Washington and are subject to the laws of the State of Washington.

5. The acts alleged herein took place in the course of conducting business within the State of Washington by Defendants and Plaintiff.

6. The acts alleged herein impact the public interest.

7. The acts alleged herein have caused injury to Plaintiff.

8. The injury to Plaintiff is related to acts of the Defendants throughout the process of his loan and subsequent attempts to modify that loan.

9. The acts alleged herein are unfair and deceptive to Plaintiff and are a violation of the Washington State Consumer Protection Act.

10. As a result of this violation, Plaintiff requests statutory damages and attorney fees as allowed under this statute.

VIII. WRONGFUL FORECLOSURE

1. Plaintiff repeats and realleges each and every item and allegation above as if fully and completely set forth herein.

2. Defendant ETS does not meet the minimum qualifications for a Trustee as required by law under RCW 61.24.010, and has failed to comply with the requisites to a trustee's sale as required by law under RCW 61.24.030.

3. Defendants HOMECOMINGS, GMAC, NATIONSTAR, and ETS, have violated other provisions of the Washington Deed of Trust Act, RCW 61.24 *et seq.*, for which the Plaintiff is entitled to recover damages against said defendants.

4. As a proximate result of the negligent or reckless conduct of Defendant HOMECMOINGS, its assignees, agents and employees, and Defendants ETS its agents, Plaintiff

1 has been threatened with imminent loss of his property, despite the fact that Plaintiff made or
2 attempted to make all payments in accordance with his loan agreement.

3 5. Plaintiff was forced to hire an attorney and to incur attorneys fees in order to
4 begin this action and to attempt to prevent the non-judicial foreclosure sale initiated by
5 Defendants HOMECOMINGS, GMAC, NATIONSTAR, and ETS.

6 6. Plaintiff is entitled to an award of damages in an amount to be proven at trial for
7 attorneys' fees incurred in maintaining this action.

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9 **IX. RIGHT TO AMEND**

10 Plaintiff reserves the right to amend this Complaint, asserting other facts and causes of
11 action after further investigation and discovery.

12 **X. RELIEF SOUGHT**

13 WHEREFORE, having set forth various causes of action against Defendants, Plaintiff
14 prays for the following relief:

15 1. Judgment be entered against Defendants, jointly and severally, awarding Plaintiff
16 damages in an amount to be proven at the time of trial, but not less than \$50,000;

17 2. The actions of all Defendants be determined to be unfair and deceptive business
18 practices in violation of RCW 19.86 and statutory damages as to each violation;

19 3. This Court award all such relief to Plaintiff as they may be entitled to under the
20 Consumer Protection Act, including treble damages and an award of costs and attorney's fees;

21 4. Plaintiff be awarded consequential damages, including attorneys' fees incurred to
22 bring this action, in an amount to be fully proved at the time of trial but not less than \$25,000;

23 5. Plaintiff be awarded his fees and costs pursuant to the written loan agreements
24 which bind the Defendants;

25 6. Plaintiff be awarded statutory damages pursuant to the Truth in Lending Act, 15
U.S.C. § 1601, *et seq.*;

1 7. The Court award such other relief as it deems just and proper.

2 DATED this ____ day of March, 2010.

3 WENGER & ASSOCIATES, P.S.

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5
6 /s/
7 MARLENE K. WENGER, WSBA 35478
8 Attorney for Plaintiff Lonnie Engel
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